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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554

MAY 15 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF)	
)	CC DOCKET NO. 96-45
)	
PROPOSAL TO REVISE THE)	CC DOCKET NO. 97-160
METHODOLOGY FOR DETERMINING)	
UNIVERSAL SUPPORT)	DA 98-715-USF PROPOSAL
)	

TO: THE COMMON CARRIER BUREAU

**COMMENTS OF THE ASSOCIATION OF COMPETITIVE
TELECOMMUNICATION PROVIDERS**

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**COMMENTS OF THE ASSOCIATION OF COMPETITIVE
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Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, the Association of Competitive Telecommunication Providers, Inc. ("APCT"), by its attorneys, submits these comments in response to the FCC's Public Notice dated April 15, 1998,¹ in the above referenced proceeding. In particular, the APCT responds to the "Proposal of Puerto Rico Telephone Company"² submitted by the Puerto Rico Telephone Company ("PRTC"), which would maintain Universal Service support in "insular areas" at their current levels, should any proposed proxy model reduce support payments below their current levels.

INTRODUCTION AND SUMMARY

The APCT is a trade association formed as a non-profit Puerto Rico corporation whose members constitute substantially all the major wireline and wireless telecommunication carriers operating in Puerto Rico, excepting PRTC. Its members include AT&T of Puerto Rico, Inc.,

¹ "Common Carrier Bureau Seeks Comments on Proposals to Revise the Methodology For Determining Universal Service Support," FCC Public Notice, DA 98-715 (rel. Apr. 15, 1998).

² In the Matter of Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket Nos. 96-45 and 97-160, Proposal of Puerto Rico Telephone Company (filed Apr. 27, 1998) ("PRTC Proposal").

Cellular Communications of Puerto Rico, Inc. Celpage, Inc., Coquí Net, Insticall, Mtel PR, Inc., Sprint, Caribe and others. The APCT's primary goal is to facilitate the deployment and development of telecommunication services and technologies in the private sector by promoting just and effective competition within the telecommunications market in Puerto Rico. The APCT therefore has standing as a party in interest to file formal comments in this proceeding.

PRTC's Proposal

PRTC's Proposal is as follows:

For any insular area that would receive less funding under the proposed proxy model methodology than that received under the methodology used in 1998, support for carriers serving a designated universal service area within such insular area (such as Puerto Rico) shall remain based on the 1998 methodology until at least January 1, 2001.

For carriers serving the insular areas identified above, there will be no transition to the proxy model methodology unless and until it can be determined that the model accurately predicts a carrier's cost of serving the area.

For purposes of this methodology, "any insular area" means any state, commonwealth, or territory that may be classified as insular".³

In essence, PRTC's Proposal seeks a waiver from the application to Puerto Rico until at least January 1, 2001, of the Commission's proxy model methodology for the determination of Universal Service Support for non-rural carriers. As explained below, the APCT concurs with the PRTC request for waiver, not for PRTC's sake, but for the sake of all telecommunication carriers and customers in Puerto Rico. The APCT concurs with PRTC's position that the sudden reduction of the federal universal support for Puerto Rico would result in drastic disruptions of telecommunication services, would put Puerto Rico's telecommunications industry into financial

³ PRTC Proposal at 2.

turmoil and jeopardize service to thousands of consumers. The reasons advanced by PRTC for requesting such postponement, however, are ill-founded.

DISCUSSION

PRTC is the incumbent telephone provider in Puerto Rico and continues to engage vigorously in the usual pursuits of entrenched monopolists. It charges its competitors access and interconnection rates that significantly exceed the rates found in the rest of the country and it cross-subsidizes its many communications businesses. At the same time, PRTC is notoriously inefficient, having more employees per 10,000 lines than any other incumbent local exchange carrier ("LEC"), yet taking longer than any other company to install trunks, reprogram switches, or respond to repair calls. The members of the APCT have found it difficult at best to compete in the telecommunications business.

Notwithstanding the above, as stated in PRTC's Proposal, in 1997 PRTC received over \$107 million in combined universal service and long term support. PRTC is obviously worried that under either of the proposed proxy models, that support will be reduced to either \$37 million or as little as \$682,000 starting next year.

According to FCC records, PRTC's problem is actually worse than it was suggested to the FCC. In the document titled "Universal Service Support and Telephone Revenue by State" published by the Common Carrier Bureau's Industry Analysis division in January 1998 (hereinafter, the "Division Report"), the following components of the Puerto Rico Universal Service Fund ("USF") contribution for 1997 are itemized:

Long Term Support - PRTC received \$96,580,000 out of a total \$471,126,000, or 20% of the total in the entire United States.

High Cost Support \$48,935,000 out of a total of \$825,644,000, or 6% of the nation's total.

PRTC received in 1997 a total of \$145,574,000, while contributing only \$8,944,000 to the USF.

While continuing to fund PRTC at current federal levels in essence rewards PRTC for its anticompetitive and inefficient behavior,⁴ the APCT is concerned that a flash-cut to the forward-looking methodology would harm competition in the Commonwealth considerably more.

First, the Puerto Rico Telecommunications Regulatory Board (“Puerto Rico Board”) would have no choice but to establish an extremely large local fund. In contrast to the federal fund, which spreads costs over a wide base, the local fund would be able to collect contributions only from the very few providers currently operating in Puerto Rico (essentially PRTC and the APCT’s members).⁵ Given the extremely high costs imposed on competitors by PRTC, it is unlikely that any of the USF contributors in the Commonwealth (other than perhaps PRTC) could simply absorb the costs. Rather, these costs would have to be passed on to end users, which obviously makes telecommunications services less affordable for consumers and impairs the ability of providers to compete.

Second, the meager pro-competitive actions taken thus far by the Puerto Rico Board would come to a grinding halt. Intra-island access charges currently are exorbitant and, despite complaints and judicial appeals filed by the APCT’s members, have shown no sign of coming down.⁶ Nor is there any movement by the Puerto Rico Board to authorize toll pre-subscription. At this point, competition in the toll market is virtually nonexistent because access charges often

⁴ There are so few competitors in Puerto Rico that it is likely PRTC will be the only entity to receive universal service funds for the foreseeable future.

⁵ The APCT also fears that the Puerto Rico Board might attempt to exempt PRTC from contributing to the local fund, which would place an insurmountable burden on the other competitors.

⁶ This even though the Puerto Rico Telecommunications Act of 1996 expressly states that all charges for telecommunications services should be based on “real costs.” 27 L.P.R.A. §269c(c).

exceed the retail toll rate charged by PRTC. Similarly, after negotiations and arbitration proceedings, no carrier in Puerto Rico has managed to obtain a reciprocal compensation rate of less than two cents per minute of use. Thus, Puerto Rico's interconnection rates are approximately 300 percent higher than those charged in the rest of the country.

If federal USF funding is cut overnight to zero, it is a foregone conclusion that the Puerto Rico Board will take no pro-competitive steps on these and other issues of vital importance to the APCT's members. To the contrary, as the upward pressure on local rates increases (which it will if Puerto Rico loses its current funding), the Board will have to look to other sources to recoup the lost revenue. The APCT's members are likely to see a significant increase – rather than the decrease they have been hoping for – in access and interconnection charges. Clearly, obtaining as much as possible from competitors would be more politically palatable than raising local telephone prices. Puerto Rico already is an extremely unattractive place to compete; this type of action would set the Commonwealth back by decades.

Although it would be nice if PRTC could become a lean, efficient provider overnight, this is not the way monopolies work. Cutting all federal USF funding by 1999 will not make it happen. Doing so would be like making a life-long drug addict go cold turkey. Drugs are bad, but the alternative is death – in this case, the death of competition.

Regarding the wording of PRTC's proposal, the APCT sees no reason for the broad language. This overly broad language needlessly restricts the Commission's ability to limit this definition of "insular" to the Commonwealth of Puerto Rico. Further, as a government-owned monopoly, PRTC has been totally insulated from the pressures on efficiency, service quality and price that competition brings to the market. APCT contends that this fact, rather than the insular nature of Puerto Rico, is the reason such a large universal service contribution is necessary. In

addition, APCT requests that even if the January 1, 2001, date is extended for rural carriers, PRTC's waiver, if approved, should be granted only until that deadline. Essentially, APCT's proposal is to edit the first bullet of the PRTC proposal to read:

For the Commonwealth of Puerto Rico, support for eligible carriers serving a designated universal service area shall remain based on the 1998 methodology until January 1, 2001.

In addition, PRTC's proposal states, "there will be no transition to a proxy model methodology unless and until it can be determined that the model accurately predicts a carrier's cost of serving the area."⁷ APCT is again troubled by this unnecessarily broad language. Should the Commission see fit to grant PRTC's waiver request, APCT requests that the Commission make clear that the proxy cost model eventually used for Puerto Rico will meet the same "least-cost, currently available technology" standards used for other LECs. A literal reading of the language used in the PRTC request could be construed to mean that until the proxy cost model equals PRTC's total revenues, there will be no transition to a proxy cost model. This would not be in the interests of the citizens of Puerto Rico, who would be deprived of the benefits of competition, nor in the interests of the public in continuing to subsidize PRTC's inefficiencies through the universal service fund.

In light of the above, the APCT requests the FCC to impose the following express conditions on PRTC before approving PRTC's Proposal for continued USF support without any cost justifications.

⁷

PRTC Proposal at 2.

1. Eliminate Unlawful Cross-Subsidies

PRTC itself has openly admitted in the past years that it has cross-subsidized its competitive services, such as paging and cellular, with monopoly-based revenues, employees, facilities, and practices. Until recently, PRTC had been unlawfully subsidizing its payphone services; that practice did not stop until PRTC was sued by a local private payphone competitor. For years, PRTC has provided preferential interconnection services and rates to its wholly-owned CMRS affiliates. For years, PRTC has been pricing its commercial mobile radio services (“CMRS”) at or below costs.

Because the FCC has granted PRTC a waiver of the separate subsidiary requirements for competitive services, PRTC has until now managed to shield these unlawful cross-subsidies from most public scrutiny. The FCC should put an immediate end to these unlawful practices, by requiring PRTC to establish a separate subsidiary for its competitive services. In addition, the FCC should order PRTC to make all its books and accounts available for public scrutiny should there be any further instances of apparent unlawful cross-subsidies.

2. PRTC’s Rates and Charges Must Become Cost-Based

PRTC evidently wants the FCC to essentially “reverse engineer” the USF formula, in order to continue receiving its annual \$146 million subsidies in the foreseeable future. PRTC’s Proposal does not even attempt to explain “why” it needs such a large subsidy, or how it has spent this money each year for the past decades. Now that every telecommunications carrier in the U.S. has to contribute to pay for PRTC’s enormous subsidy, all of these carriers, and certainly all Members of Congress, are entitled to some serious explanations from PRTC.

The FCC should by no means accept the fact that Puerto Rico is “insular” and relatively poor, as justification for this continued subsidy. PRTC should be required to face no more or

less regulatory scrutiny than applies to LECs in all 50 states of the Union. If PRTC cannot cost-justify its practices, then the FCC will need to recalculate PRTC's subsidies. Presumably, no Member of Congress would be willing to allow 25% of the nation's basic service support funds to flow to a telephone company that will not even consider telling the rest of us how it has spent this money.

In exchange for granting PRTC this generous exemption from the cost-based models, the FCC should order PRTC to produce cost-based explanations for all its rates and services, including interconnection and access charges. Moreover, PRTC needs to make this analysis in comparison to the costs of comparable carriers throughout the U.S.; otherwise, PRTC will simply be justifying its subsidies based on its current bloated payroll and inherent inefficiencies (as mentioned before, PRTC's employees per lines in service ratio is dramatically higher than that of any other carrier in the U.S.). If PRTC will not voluntarily agree to make its rates cost-based, the FCC may need to reconsider whether PRTC is entitled to a waiver of the cost-study obligation to continue to receive its high subsidies.⁸

3. The "Transition Period" Needs to End at a Definite Date

The FCC should clearly state that PRTC will have until a date certain to justify this "waiver" of the proxy model, beyond which time it will qualify for USF supports on the same criteria as all other non-rural carriers.⁹ Absent these definite deadlines, PRTC will continue to do

⁸ This is particularly true in light of the fact that inasmuch as PRTC's cross-subsidies and above costs access charges are used to subsidize universal service, such subsidies would be in violation of Section 253 of the Communications Act, which mandates that all state USF mechanisms must be competitively neutral.

⁹ The FCC should be aware that negotiations are currently under way regarding the sale of PRTC. Inasmuch as PRTC is sold to a company with considerable economies of scale, the FCC should revisit the issues presented in PRTC's Proposal. To this effect, it should be noted that the FCC considered the size of PRTC and its economies of scale when determining not to consider PRTC as a rural carrier for USF

what it has historically done with the FCC: plead that it is a “special case” that requires continued waivers of the FCC’s rules. Now that PRTC is receiving a substantial part of the rest of the nation’s money, Congress and the FCC need to put an end to this history of regulatory forbearance toward this unregulated monopoly.

4. PRTC Should be Ordered to Submit Quarterly Reports

The APCT urges the Commission to condition continued funding at current levels on the receipt of quarterly reports from both PRTC and the Puerto Rico Board outlining the steps they have taken to encourage competition and reduce PRTC’s costs. These reports should include information on the reduction of Intra-island access charges and reciprocal compensation rates, measures taken to eliminate cross-subsidization, and the establishment of performance standards consistent with those of incumbent LECs in the rest of the country. If, at the end of a year, PRTC (or any successor in interest) and the Puerto Rico Board have failed to make meaningful progress on these issues, the Commission must sanction them by reducing federal USF funding accordingly.

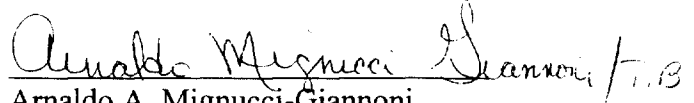
purposes. See In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order (rel. May 8, 1997) at ¶ 315.

CONCLUSION

For the foregoing reasons, the APCT supports PRTC's request to postpone the application of the forward-looking cost model to Puerto Rico until January 1, 2001, subject to above-listed conditions and modifications.

Respectfully submitted,

**ASSOCIATION OF COMPETITIVE
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DATE: May 15, 1998

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CERTIFICATE OF SERVICE

I, Tanya Butler, hereby certify that on this 15th day of May, 1998, a copy of the foregoing "Comments Of The Association Of Competitive Telecommunication Providers" was served via first class mail, postage prepaid or by hand (*) on the following:


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